

SEP 5 1968

FEDERAL BUREAU OF INVESTIGATION

AGREEMENT AND ASSIGNMENT dated as of August 1, 1968, between the corporation first name following the testimonium below (hereinafter called the Manufacturer) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, a Maryland corporation with an office at Calvert & Redwood Streets, Baltimore, Maryland 21203, acting as Agent under a Finance Agreement dated as of August 1, 1968 (hereinafter called the Finance Agreement), said Trust Company, so acting, being hereinafter called the Assignee;

WHEREAS, the Manufacturer, BEAUFORT EQUIPMENT CORPORATION (hereinafter called the Company), and NORFOLK SOUTHERN RAILWAY COMPANY (hereinafter called the Guarantor), have entered into a Conditional Sale Agreement dated as of August 1, 1968 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well

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as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment, and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this

Paragraph, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement; without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 14 and 15 of the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained in Articles 1, 2, 3, 6, 10, 14, 15 and 16 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask for, demand, sue for, and collect and re-

ceive any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth therein to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to sell such unit, and the title to such unit will be free of all claims, liens and encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit

by the Manufacturer to the Company; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement has been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer covenants and agrees that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Company arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Article 15 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. The foregoing indemnification provision is conditioned upon (1) the Assignee promptly moving or taking other prompt action on the basis of Article 16 of the Conditional

Sale Agreement to strike any such defense, set-off, counterclaim or recoupment asserted by the Company or the Guarantor and (2), if the court or other body having jurisdiction denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue, the Assignee promptly notifying the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

Except in cases of designs specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the Equipment, or any unit thereof, of any such design, article or material infringing or claimed to infringe on any patent or other right.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery

thereof to the Company, in letters not less than one inch in height, the following legend:

"MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, AGENT, OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, and after payment to the Manufacturer as provided in Section 5 hereof, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on the Closing Date referred to in Article 3 of the Conditional Sale Agreement, shall pay to the Manufacturer an amount equal to the portion of the Purchase Price (as defined in said Article 3) not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, transferring to the Assignee title to the units of the Equipment and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal

title to such units and good and lawful right to sell such units, and title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement;

(c) Invoices for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(d) Opinion, dated as of such Closing Date, of Messrs. Winston, Strawn, Smith & Patterson, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iii) the Assignee is vested with all the rights,

titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens and encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, or, if any approval is necessary, it has been obtained, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America, and (vii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinions of counsel for the Company and the Guarantor, dated as of such Closing Date, to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) above, and stating that (i) the Company or the Guarantor, as the case may be, is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered on behalf of the Company or the Guarantor, as the case may be, and is a valid and binding instrument enforceable against the Company or the Guarantor, as the case may be, in accordance with its terms; and (iii) in the case of the opinion of counsel for the Guarantor, that, assuming due authorization, execution and delivery of the Assignment, the Assignment is a valid and binding instrument;

(f) Opinion of counsel for the Manufacturer, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and

this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery by the Company and the Guarantor) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(g) Unless payment of the amount, if any, payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, the receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraph (d) of the first paragraph of this Section 5, counsel may in fact rely as to any matters governed by the law of any jurisdiction

other than Illinois or the United States, upon the opinions of counsel for the Manufacturer or the Company or the Guarantor as to such matters.

The obligations of the Assignee hereunder to make payment for the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect thereto.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the titles, interests, powers, privileges and remedies and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and the Guarantor) it is a valid and existing agreement binding upon the Manufacturer, the Company and the Guarantor, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles, interests, powers, privileges and remedies hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of North Carolina; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall

be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GREENVILLE STEEL CAR COMPANY,

[CORPORATE SEAL]

by *H. C. Buecht*
Vice President

Attest:

F. B. Ryan
and Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST
COMPANY, as Agent,

[CORPORATE SEAL]

by *W. B. Potter*
Vice President

Attest:

J. E. Henry
Corporate Trust Officer

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF MERCER) ss.:

On this *30th* day of *August*, 1968, before me personally appeared *G. C. Brecht*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith

Notary Public

LEORA SMITH, Notary Public
GREENVILLE, GREENE COUNTY

My Commission Expires Feb. 21, 1969

My Commission Expires *Feb 21*, 1969

[NOTARIAL SEAL]

STATE OF MARYLAND)
 : ss.:
 CITY OF BALTIMORE)

On this 4th day of SEPTEMBER 1968, before me personally appeared W. B. POTTER, to me personally known, who, being by me duly sworn, says that he is a Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy E. Schay
 Notary Public

My Commission Expires July 1, 1969.

[NOTARIAL SEAL]

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of August 1, 1968.

BEAUFORT EQUIPMENT CORPORATION,

by

R. Leigh Quander
President

NORFOLK SOUTHERN RAILWAY COMPANY,

by

Henry B. Egan
President